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17 UNITED STATES DISTRICT COURT

18 DISTRICT OF NEVADA

19 CARY KATZ, an individual,

20 Plaintiff,

21 vs.

22 MARK STEYN, an individual; MARK
23 STEYN ENTERPRISES, INC., a New
24 Hampshire corporation; and DOES 1-10,
25 inclusive,

26 Defendants.

27 Case No. 2:18-CV-00997-JAD-GWF
28 Hon. Jennifer A. Dorsey, Courtroom 6D

[PROPOSED] PROTECTIVE ORDER

Magistrate Judge: Hon. George Foley, Jr.,
Courtroom 3A

Trial Date: None Set

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public disclosure
 4 and from use for any purpose other than prosecuting this litigation may be warranted. The Court
 5 therefore enters this Order.

6 This Order does not confer blanket protections on all disclosures or responses to discovery
 7 and that the protection it affords from public disclosure and use extends only to the limited
 8 information or items that are entitled to confidential treatment under the applicable legal principles.
 9 The parties further acknowledge, as set forth in Section 12.3, below, that this Order does not entitle
 10 them to file confidential information under seal; Local Rule IA 10-5 sets forth the procedures that
 11 must be followed and the standards that will be applied when a party seeks permission from the
 12 court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: A party’s or person’s confidential
 17 financial information, trade secrets or proprietary information. Confidential information shall not
 18 include information or documents the sole basis for designation of which is that public disclosure
 19 may be annoying or embarrassing to the designating party or person.

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
 21 as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it
 23 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
 25 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 26 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 27 discovery in this matter.

28 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to

1 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 2 consultant in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action. House
 4 Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
 6 entity not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
 8 but are retained to represent or advise a party to this action and have appeared in this action on
 9 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors, employees,
 11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 13 Material in this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support services
 15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
 16 storing, or retrieving data in any form or medium) and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
 18 "CONFIDENTIAL."

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 20 Producing Party.

21 **3. SCOPE**

22 The protections conferred by this Order cover not only Protected Material (as defined above),
 23 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
 24 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
 25 presentations by Parties or their Counsel that might reveal Protected Material. However, the
 26 protections conferred by this Order do not cover the following information: (a) any information that
 27 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
 28 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of

1 this Order, including becoming part of the public record through trial or otherwise; and (b) any
 2 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
 3 after the disclosure from a source who obtained the information lawfully and under no obligation of
 4 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
 5 separate agreement or order.

6 **4. DURATION**

7 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 8 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 9 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 10 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 11 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
 12 time limits for filing any motions or applications for extension of time pursuant to applicable law.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 15 Non-Party that designates information or items for protection under this Order must take care to
 16 limit any such designation to specific material that qualifies under the appropriate standards. The
 17 Designating Party must designate for protection only those parts of material, documents, items, or
 18 oral or written communications that qualify – so that other portions of the material, documents,
 19 items, or communications for which protection is not warranted are not swept unjustifiably within
 20 the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 22 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 23 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 24 other parties) expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it designated for
 26 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
 27 that it is withdrawing the mistaken designation.

28 / / /

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but
 7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 8 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion
 9 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
 10 identify the protected portion(s) (e.g., by making appropriate markings in the margins).
 11 A Party or Non-Party that makes original documents or materials available for inspection need not
 12 designate them for protection until after the inspecting Party has indicated which material it would
 13 like copied and produced. During the inspection and before the designation, all of the material made
 14 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
 15 identified the documents it wants copied and produced, the Producing Party must determine which
 16 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
 17 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
 18 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
 19 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 20 appropriate markings in the margins).

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
 22 the Designating Party identify on the record, before the close of the deposition, hearing, or other
 23 proceeding, all protected testimony.

24 (c) for information produced in some form other than documentary and for any
 25 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 26 container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If
 27 only a portion or portions of the information or item warrant protection, the Producing Party, to the
 28 extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 2 designate qualified information or items does not, standing alone, waive the Designating Party's
 3 right to secure protection under this Order for such material. Upon timely correction of a
 4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
 5 accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any party or non-party may challenge a confidentiality
 8 designation within a reasonable time after he receives notification that the information or document
 9 is claimed to be confidential. The reasonable time for challenging a confidentiality designation
 10 should generally be no longer than 30 days, and the challenge must be made in writing. The
 11 challenging party or person is not required to provide a specific explanation for its challenge. The
 12 parties, however, shall meet and confer in a good faith attempt to resolve a dispute over the
 13 confidentiality designation. In deciding a motion relating to a confidentiality designation the court
 14 may award expenses, including reasonable attorney's fees, to the prevailing party or person if the
 15 losing party or person's position was not substantially justified, and other circumstances do not make
 16 an award of expenses unjust. *See Fed.R.Civ.P. 37(a)(5).*

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
 18 by providing written notice of each designation it is challenging. To avoid ambiguity as to whether a
 19 challenge has been made, the written notice must recite that the challenge to confidentiality is being
 20 made in accordance with the Protective Order. The parties shall attempt to resolve each challenge in
 21 good faith and must begin the process by conferring directly (in voice to voice dialogue audio
 22 recorded by both parties; other forms of communication are not sufficient) within 14 days of the date
 23 of service of notice. The Challenging Party must explain the basis for its belief that the
 24 confidentiality designation was not proper and must give the Designating Party an opportunity to
 25 review the designated material, to reconsider the circumstances, and, if no change in designation is
 26 offered, to explain the basis for the chosen designation.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 28 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21

1 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
 2 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
 3 accompanied by a competent declaration affirming that the movant has complied with the meet and
 4 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make
 5 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
 6 automatically waive the confidentiality designation for each challenged designation. In addition, the
 7 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
 8 good cause for doing so, including a challenge to the designation of a deposition transcript or any
 9 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
 10 competent declaration affirming that the movant has complied with the meet and confer
 11 requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
 13 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 15 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
 16 retain confidentiality as described above, all parties shall continue to afford the material in question
 17 the level of protection to which it is entitled under the Producing Party's designation until the court
 18 rules on the challenge.

19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 23 the categories of persons and under the conditions described in this Order. When the litigation has
 24 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 25 DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 27 secure manner that ensures that access is limited to the persons authorized under this Order.

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by

the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
11 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, mock
15 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
16 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
20 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
21 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
22 this Order.

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 | **8. PROTECTED MATERIAL SUBPOENAED OR
ORDERED PRODUCED IN OTHER LITIGATION**

27 If a Party is served with a subpoena or a court order issued in other litigation that compels

disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue
6 in the other litigation that some or all of the material covered by the subpoena or order is subject to
7 this Protective Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

17 | **9. A NON-PARTY'S PROTECTED MATERIAL
SOUGHT TO BE PRODUCED IN THIS LITIGATION**

19 (a) The terms of this Order are applicable to information produced by a Non-
20 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
21 Parties in connection with this litigation is protected by the remedies and relief provided by this
22 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
23 additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to produce a
22 Non-Party's confidential information in its possession, and the Party is subject to an agreement with
23 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that

1 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of this Order in this
 3 litigation, the relevant discovery request(s), and a reasonably specific description of the information
 4 requested; and

5 (3) make the information requested available for inspection by the Non-
 6 Party.

7 (c) If the Non-Party fails to object or seek a protective order from this court
 8 within 14 days of receiving the notice and accompanying information, the Receiving Party may
 9 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
 10 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
 11 possession or control that is subject to the confidentiality agreement with the Non-Party before a
 12 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden
 13 and expense of seeking protection in this court of its Protected Material.

14 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 16 Material to any person or in any circumstance not authorized under this Order, the Receiving Party
 17 must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
 18 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
 19 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
 20 such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
 21 attached hereto as Exhibit A.

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED
 23 OR OTHERWISE PROTECTED MATERIAL**

24 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 25 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
 26 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
 27 modify whatever procedure may be established in an e-discovery order that provides for production
 28 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

1 parties reach an agreement on the effect of disclosure of a communication or information covered by
 2 the attorney-client privilege or work product protection, the parties may incorporate their agreement
 3 in a stipulated protective order submitted to the court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 6 its modification by the court in the future.

7 12.2 Right to Assert Other Objections. No Party waives any right to object to disclosing or
 8 producing any information or item on any ground not addressed in this Protective Order. Similarly,
 9 no Party waives any right to object on any ground to use in evidence of any of the material covered
 10 by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating Party or a
 12 court order secured after appropriate notice to all interested persons, a Party may not file in the
 13 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
 14 Material must comply with Local Rule IA 10-5. Protected Material may only be filed under seal
 15 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
 16 to Local Rule IA 10-5, a sealing order will issue only upon a request establishing that the Protected
 17 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
 18 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Local Rule IA
 19 10-5(a) is denied by the court, then the Receiving Party may file the information in the public record
 20 pursuant to Local Rule IA 10-5(b) unless otherwise instructed by the court.

21 **13. FINAL DISPOSITION**

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 23 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
 24 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 25 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
 26 the Protected Material is returned or destroyed, the Receiving Party must submit a written
 27 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
 28 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material

1 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
3 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
4 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
5 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
6 and expert work product, even if such materials contain Protected Material. Any such archival copies
7 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION).

9
10 IT IS SO ORDERED.

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12 DATED: July 31, 2019

13 
14 United States District/Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Order that was issued by the United States District Court for the District of Nevada on _____,
6 20____, [date] [ECF ____] in the case of CARY KATZ, vs. MARK STEYN; MARK STEYN
7 ENTERPRISES, INC.; and DOES 1-10, inclusive, Case No. 2:18-CV-00997-JAD-GWF. I agree to
8 comply with and to be bound by all the terms of the Court's Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
10 contempt. I solemnly promise that I will not disclose in any manner any information or item that is
11 subject to this Order to any person or entity except in strict compliance with the provisions of this
12 Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the District of
14 Nevada for the purpose of enforcing the terms of this Order, even if such enforcement proceedings
15 occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone number] as
18 my Nevada agent for service of process in connection with this action or any proceedings related to
19 enforcement of the Court's Order.

21 | Date: _____

22 City and State where sworn and signed: _____

24 Printed name:

26 || Signature: